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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 30th April, 2024

No. 13/2/106-HII(2)-2024/6880.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **1/2024** dated **09.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RANJEET KUMAR NAGOTRA S/O SH. HARBANS LAL R/O FLAT NO.906, TOWER NO.4, HIGHLAND PARK SOCIETY, BHABHAT, ZIRAKPUR, SAS NAGAR, PUNJAB - 140603 (Workman)

AND

1. M/S FERRING PHARMACEUTICALS PVT. LTD. THE CAPITAL 509/510, A-WING, 5TH FLOOR, BANDRA KURLA COMPLEX, BANDA (EAST) MUMBAI - 400051 THROUGH ITS MANAGING DIRECTOR.
2. M/S FERRING PHARMACEUTICALS PVT. LTD. THE CAPITAL 509/510, A-WING, 5TH FLOOR, BANDRA KURLA COMPLEX, BANDA (EAST) MUMBAI - 400051 THROUGH ITS GENERAL MANAGER, SOUTH ASIA AND ASEAN.
3. M/S FERRING PHARMACEUTICALS PVT. LTD. THE CAPITAL 509/510, A-WING, 5TH FLOOR, BANDRA KURLA COMPLEX, BANDA (EAST) MUMBAI - 400051 THROUGH ITS ASSOCIATED DIRECTOR HR & ADMIN.
4. M/S FERRING PHARMACEUTICALS PVT. LTD. THE CAPITAL 509/510, A-WING, 5TH FLOOR, BANDRA KURLA COMPLEX, BANDA (EAST) MUMBAI - 400051 THROUGH ITS DIRECTOR RMMH BU MS. HARSHALA MOSES.
5. M/S FERRING PHARMACEUTICALS PVT. LTD. THE CAPITAL 509/510, A-WING, 5TH FLOOR, BANDRA KURLA COMPLEX, BANDA (EAST) MUMBAI - 400051 (Management)

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Jalinder Kumar
Date: 2024.05.15
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Reason: Published
Location:

AWARD

1. Ranjeet Kumar Nagotra, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

(1539)

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2. Briefly stated the averments of claim statement are that the workman was appointed as sales promotion employee under the designation of Sr. Key Account Manager by the respondents (*here-in-after 'managements'*) at Chandigarh H.Q. vide their order Ref No.2016/712702/APPT/44 dated November 18, 2016. The last drawn gross salary of the workman is ₹ 80,085/- after all statutory deductions. Apart from the salary the workman was also entitled to other privileges and benefits as per the company norms and his own entitlement. The workman was also entitled to field working allowance, travelling allowance and other sundry expenses incidental to the field working and also sales incentives linked with the sales and as per discretion of the management. M/s Ferring Pharmaceuticals Pvt. Ltd is a company incorporated under Company's Act, 1956 and involved in pharmaceutical marketing. Therefore, the company falls under the definition of "establishment" as defined under Section 2(a) of Sales Promotion Employees (condition of service) Act, 1976. The workmen working as sales promotion employees are employed by the company for the purpose of promotion of sales and business, their work profile is limited to promote the products of the company to Doctors with an aim to convince the Doctors to prescribe or purchase the products, check the availability of the products at nearby chemists and, if there was any order, give the same to authorized local office / distributors / wholesaler of the company for onward supply, collect sales record and expiries from the local distributors / wholesalers and send to the company for approval and other necessary action. The workman never worked in supervisory capacity. No power of management ever lies with the workman. None of the activities performed by the workman were discretionary but were subject to approval of line Managers and the line Managers always worked jointly with workman to check and supervise his work. The work of the sales promotion employees is both manual and clerical. The manual work involves visiting Doctors to Doctors, hospital to hospital to reach out to the listed customers of the company. He also has to visit from chemist to chemist and pharmacy to pharmacy. The clerical work involves preparation and submission of daily work report, preparation and submission of expense statement, preparation and submission of stock and sales statement, preparation and submission of market information and competitors' activity. The workman has been performing his duties with utmost sincerity, diligence and assiduity as per the prescribed norms of the organization. Moreover, due to sincere, honest and hard efforts of the workman the products of the company were established and the company was earning very huge profits in the territory worked by him. The immaculate, impeccable and infallible work done by workman was replete with achievement, accomplishments and attainment which the respondents not only appreciated and acknowledged but also awarded and rewarded from time to time during his whole service tenure which is on record. The awards were bestowed as certificates and trophies which are still decorated in the drawing room of the workman and the awards were bestowed as the productivity linked incentives which were earned regularly by the workman. Owing to sincere and assiduous work of the workman the products of the company were well established in the area worked by applicant and respondents are earning very good profits. Apart from being extremely sincere, diligent and assiduous worker of the company the workman is also an active, sincere and committed member of trade union i.e. Punjab & Chandigarh Medical & Sales Representatives Union (*here-in-after referred as 'PCMSRU'*). Further PCMSRU is a union registered under Trade Union Act, 1926 having its Registered Office at Cheema Bhawan, Sector- 30-B, Chandigarh. The main aim of PCMSRU is to organize all the workers of Pharma industry working at Chandigarh particularly the sales promotion employees of the company into a trade union and establish their trade union rights and also to ensure that legislative changes are brought about in the labour laws of the country and also to ensure that all the labour laws are implemented by the companies and benefits of the legislative changes are passed on the workers and the not implementing the labour laws are prosecuted and penalized. The management of Ferring was inimical towards the employees joining the trade union because they were violating about every law applicable to the Sales Promotion Employees. They had been cautioning and threatening the workman to dissociate from indulging into legal trade union activities under threat, duress and coercion. Time and again the management of the company had warned the workman to dissociate from the legal trade union activities of PCMSRU otherwise remain prepared to face the action of the management which can be termination of services, transfer to far off place, suspension, illegal

wage / expense cut etc. However, the workman continued his participation in legal trade union activities ignoring the threats of management. The management was serious about their threat of action. Standing true to their threat the management terminated the services of workman vide their order dated June, 22, 2023 by leveling flimsiest of insinuations and also by tearing the principles of natural justice to the shreds i.e. without charge sheet, show cause notice, enquiry. Termination order was issued to the workman in gross violation of the principles of natural justice and in gross violation of mandatory provisions of labour laws applicable on me i.e. without any enquiry, and retrenchment compensation thereof. The management has indulged in to unfair labour practices and terminated him from the services illegally vide their order dated 22.06.2023. The said termination order is illegal, unjustified and against the mandatory provisions of law as they have removed the workman in illegal, unjustified and wrongful manner without complying with mandatory provisions of the ID Act. The termination orders issued by the management are illegal, arbitrary, unjustified, infructuous, null and void in the eyes of the law because the same is issued in gross violation of principles of natural justice. The management has illegally terminated the workman from services of the company, which is not in good faith but in colorable exercise of managerial powers and rights. Moreover, the action of the management reflects utter vendetta and belligerence owing to involvement of the workman in the legal trade union activities which are permitted under Article 19(1)(C) of very esteemed constitution of the country but the action of the management reflects of utterly whimsical and borne out of intolerance towards somebody's constitutional rights. Juniors to the workman are still working in the company and further the management is continuously recruiting new person without providing him an opportunity or without considering his nomenclature. The managements have violated Section-25F, 25G and 25H of the ID Act. The workman is unemployed since the victimization and has not been able to get a job since victimization despite all the efforts. Prayer is made that that the workman may be reinstated into the services of the company at Chandigarh H.Q. with continuity of service, seniority and consequential benefits.

3. Upon notice, the management appeared through Representative Shri Ajay Pal Singh.

4. On 30.01.2024, the workman got recorded his statement, which is reproduced as below :-

"Stated, that self attested copy of my aadhar card is Mark-A. I have effected compromise with the management No.1 to 5. Therefore, I do not press the present Industrial Dispute Reference and it may be disposed off accordingly in the Lok Adalat."

5. Heard. In view of the aforesaid statement of the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 09.03.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 6th May, 2024

No. 13/1/7469-HII(2)-2024/7302.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **183/2004** dated **19.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JAGBIR SINGH S/O SH. DARYAO SINGH, R/O VILLAGE P.O. MEHLANA,
DISTRICT SONEPAT. (Workman)

AND

THE MANAGING DIRECTOR, HARYANA STATE ELECTRONICS DEVELOPMENT LIMITED,
SCO 111-113, SECTOR 11-B, CHANDIGARH. (Managements)

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/7469-HII(2)-2004/10775 Dated 15.06.2004 received from the Secretary Labour, Chandigarh Administration is being disposed of :-

"Whether the services of Sh. Jasbir [sic] Singh, S/o Sh. Daryao Singh, R/o Village, P.O. Mehlana, District Sonapat were terminated illegally by the management of The Managing Director, Haryana State Electronics Development Limited, SCO 111-113, Sector-11-B, Chandigarh, if so, to what effect and to what relief he is entitled to, if any ?"

2. Shri Jagbir Singh (*hereinafter called 'workman'*) had served demand notice dated 10.03.2003 upon the Managing Director, Haryana State Electronics Development Corporation Limited, Chandigarh (*hereinafter called 'management'*) under Section 2A of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*). Upon notice, the workman appeared through his representative. On dated 24.11.2004 Learned Representative for the workman made a statement that the demand notice dated 10.03.2003 may be treated as statement of claim.

3. Briefly stated the averments of demand notice-cum-claim statement are that the workman had been working in Haryana State Electronics Development Corporation Limited, Chandigarh as a Peon on contract basis from 02.12.1998 initially for a period of three months, vide a duly executed agreement which was later on extended from time to time. The post on which he was appointed was a sanctioned post. He served the corporation with his utmost ability to the entire satisfaction of his seniors and superiors. He throughout remained obedient, subservient and extended every sought of every sort of cooperation during his entire service and there is not even a single complaint against him. His services had throughout remained blotless and flawless. He had been paid salary through cheques, drawn on Bank of India, Sector 17-B, Chandigarh as he had been working as a regular employee. The corporation has been deducting CPF, family pension, ESI and Income Tax at source from his salary. The management had been sending necessary information to the Income Tax Department in the prescribed proforma. Earlier his services were engaged on contract basis but later on he had been working as a regular employee of the Corporation, which is evident from the fact that during the last year of his employment, from the date of his termination no contract agreement was executed by the Corporation, however, before terminating his services he was asked to sign on a blank proforma agreement with the assurance for further benefits and he has every apprehension that the same might have been used to his dis-advantage. The Corporation initially did not deduct the provident fund from his salary as well as from the salary of other

employees, as per the Provident Fund Rules but later on a complaint to the Commissioner of Provident Fund, the Assistant Provident Fund Commissioner undertook the investigation with regard to the depositing of the provident fund by the Corporation, from the salary of its employees. It was found that a huge amount was due from the Corporation on this score and demand in this regard has been raised. The order dated 17.05.2002 passed by the Assistant Provident Fund Commissioner, infuriated the authorities and they advised a novel method to get rid of the employees and to save themselves from the rigor of Provident Fund Act, by inviting tender (tender dated 05.09.2002) for hiring the services of the contractor and decided to get the work, which was earlier done by him and other similar employees, through the contractor. In response to the above said tender, various contractors submitted their tenders and ultimately the M/s Aman Securities and Detective (Regd.) was allotted the contract for providing employees of menial class on contract basis. Copy of acceptance letter is dated 16.09.2002. After acceptance of the tender of the said contractor, his salary was not released. On inquiry he was asked to get his salary from the above said contractor and he was further informed that in future the salary will be paid through the contractor and not directly by the Corporation. He also represented in this regard but that failed to invoke any favourable response, as a result of which he had to approach the Hon'ble High Court of Punjab & Haryana by way of writ petition and it was only on the direction of Hon'ble High Court that his salary was released. After engaging the services of the above said contractor, he was abruptly removed from service on 12.11.2002 without giving any show cause notice for his termination. His salary from 02.12.1998 to 08.12.1998 and from 25.10.2002 to 12.11.2002 has not been released instead of repeated requests. The action of the Corporation, allotting the work to a private contractor and to terminate his services without any notice is not only unfair trade practice but also illegal being against the decision of the Hon'ble Apex Court. The action of the management to terminate his services verbally is against all the norms of law, natural justice, fair play and equity. It runs contrary to the judicial pronouncements, as it has been held that the contract labour has a right to be observed in regular service after working for over 240 days in a year in an establishment and having their working supervised and administered by an agency within the meaning of Article 12 of the Constitution. More than 15 posts of Peons /Helpers and Peon-cum-Chowkidar are lying vacant with the Corporation which further makes the order of his removal more defective and not sustainable. The action of the management in terminating his services verbally is also against the provision of Section 25F of the ID Act as no show-cause notice was served nor any inquiry was held before terminating his services. Apart from this, no retrenchment compensation has been given to him. Prayer is made that the workman may be reinstated with full back wages and continuity in services.

4. On notice, management contested the claim statement by filing written reply on 09.06.2005 wherein preliminary objections are raised on the ground that applicant was engaged by the respondent (hereinafter management) to work purely on contract basis on behalf of the management-Corporation vide an agreement dated 20.11.1999 duly executed between the parties. As per Clause 4 of the said agreement, in case of any difference or dispute arising out of the said agreement, the same is to be referred to the sole arbitration of the Managing Director of the management-Corporation or its nominee, whose award shall be final and binding on both the parties, therefore, in view of the arbitration clause, the present dispute cannot be adjudicated by this Court, as such the same is liable to be dismissed on this ground alone. Even otherwise, there is no cause of action in favour of the workman to serve the present notice because the workman was engaged by the management on contractual basis vide agreement dated 20.10.1999 and his engagement was for a fixed period and it was to be terminated with the efflux of time. It was also agreed between the parties that it shall not give any right to the workman for regular employment in the Corporation, hence the workman has no right to claim employment on contractual agreement. There is no industrial dispute between the parties, as the workman was engaged purely on contract basis vide agreement dated 20.10.1999 duly executed between the parties. The terms & conditions as settled between the parties are binding on both the parties, therefore, the workman has no right to approach this Authority under the provisions of the ID Act. As such the claim is liable to be rejected on this ground alone.

5. Further on merits, it is stated that the workman was engaged as Peon on contractual basis vide agreement dated 20.10.1999 on the terms & conditions as agreed therein. As per the terms of the contract, the workman was to be paid monthly consolidated amount at the scale of ₹12,000/- and @ 2,000/- per month on equal installments. It is denied that the said assignment was renewed from time to time. Every time the services of the workman were engaged by the management, a new agreement was signed between the parties, independent of any previous agreement. It is denied that the post on which the workman was appointed was a

sanctioned post. The workman was to be paid a consolidated amount in monthly installments and there is no question of any deduction etc. The amount paid to the workman was as per the contract and not as salary. It is denied that the workman had been paid salary and that he had been working as a regular employee and the management had been making deductions from the salary of the workman. The allegations that during the last year of his employment no agreement was executed and that before his termination, the workman was asked to sign on a blank proforma agreement with the assurance for further benefit are denied being totally false and incorrect. No deduction was to be made from the contractual amount payable to the workman, as such no deduction was made from the amount payable to the workman. However, the correspondence between the Assistant Provident Fund Commissioner and the management are matter of record but the same has nothing to do with the workman or his case. There is no question of getting infuriated because it is for the management to evaluate as to what system is beneficial for the management. However, the contents regarding tender are matter of record. The acceptance of tender of the contractor has nothing to do with the payment of dues to the workman. It is denied that the workman was asked to get his salary from the contractor. The filing of the writ petition is a matter of record. It was clearly mentioned in the agreement duly executed between the parties that the working of the above contract shall in no case confer any right to continue beyond the aforesaid date nor any right to seek employment in the corporation under any circumstances whatsoever. Since, the relationship between the parties was purely contractual and there was no relationship of employer & workman and the provisions of Section 25 of the ID Act are not applicable to the facts of the present case, therefore, it is denied as incorrect that the management in terminating the services of the workman verbally is against Section 25 of the ID Act. Rest of the averments of claim statement are denied and prayer is made that the present reference being not maintainable and being totally devoid of any merit may be rejected with cost.

6. The workman filed rejoinder wherein the contents of the written reply except admitted facts are denied as wrong and averments of demand notice-cum-claim statement are reiterated.

7. From the pleadings of the parties, following issues are framed vide order dated 16.03.2006 :-

1. Whether the services of the workman were terminated illegally by the respondent/management, if so, to what effect and to what relief the workman is entitled to, if any ? OPW
2. Whether the reference is not maintainable, as alleged ? OPM
3. Whether there is no cause of action in favour of the applicant-workman, as alleged ? OPM
4. Whether there is no relationship of employee and employer between the parties, as alleged ? OPM
5. Relief.

8. In evidence, workman Jagbir Singh examined himself as AW1 and tendered into evidence his affidavit Exhibit 'WA' along with documents Exhibit 'W1' to Exhibit 'W3'.

Exhibit 'W1' is subscriber's annual statement of accounts for the year 2002-2003 under The Employees Provident Funds Scheme, 1952 in favour of Jagbir Singh having account No.PB/21343/29.

Exhibit 'W2' is copy of tender document bearing tender No.HARTRON/ADMN/10/2002 with Date of closing 12.08.2002 and Date of Opening 12.08.2002.

Exhibit 'W3' is copy of office noting dated 12.09.2002 prepared by SO (Admn.), Haryana State Electronics Development Corporation Limited, on the subject 'Engaging of Agency for providing Security and other services to the Corporation'.

9. On 21.01.2010 Learned Representative for the workman closed the evidence.

10. On the other hand, despite availing opportunities including last opportunity, the management failed to produce any evidence. As such, vide order dated 13.12.2011 passed by the then Presiding Officer, Industrial Tribunal & Labour Court, U.T. Chandigarh, evidence of the management closed by order.

11. Vide Award dated 31.01.2012 passed by the then Presiding Officer, Industrial Tribunal & Labour Court, U.T. Chandigarh this reference was allowed and the management was directed to reinstate the workman with continuity of service and twenty per cent back wages. Aggrieved by the Award dated 31.01.2012, the management i.e. Haryana State Electronics Development Corporation Limited challenged by the same by way of filing CWP No.6602 of 2013, decided by the Hon'ble High Court of Punjab & Haryana vide order dated 04.01.2024. The relevant portion of order dated 04.01.2014 is reproduced as below :-

"13. Considering the totality of facts and circumstances of the instant case, I am of the view that since the objection raised by petitioner-Management that case of respondent No.2-workman was covered under Section 2(oo)(bb) of the 1947 Act, has not been considered by the Tribunal nor the finding on the issue of continuous service in terms of Section 25-B of the 1947 Act has been rendered in accordance with law, therefore, impugned award dated 31.01.2012 (Annexure P-4) is unsustainable in the eyes of law, and accordingly, the same is set aside.

Since material issues have not been considered and decided by the Tribunal in accordance with law, I deem it appropriate to remand the matter to the Tribunal for fresh decision in accordance with law, within a period of one year from the date when the parties appear before it.

The parties are directed to appear before the Tribunal below on or before 12.02.2024.

14. The present writ petition is partly allowed in the aforesaid terms."

12. On 12.02.2024 Shri Subhash Talwar appeared and filed memo of appearance on behalf of the workman and power of attorney on behalf of the management is filed by Representative Shri Vaibhav Gupta, Advocate jointly with Shri Pankaj Gupta, Advocate. On 29.02.2024 Shri Subhash Talwar filed authority letter on behalf of the workman.

13. I have heard the arguments of Learned Representatives of the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 4 :

14. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

15. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

16. Workman Jagbir Singh examined himself as AW1 and vide his affidavit Exhibit 'WA' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W3'.

17. On the other hand, the management has neither led oral nor documentary evidence.

18. It is pertinent to mention here that the workman filed an application dated 10.04.2007 under Order XI Rule 2 and 14 CPC for discover and production of documents alleging that the same are in the possession of the management. The workman has sought the production of following documents :-

- i) Contracts executed between the management and the workman during the year 1998-99, 1999-2000, 2000-01 and 2001-02.

- ii) Security / attendance register for the year 1998-99, 1999-2000, 2000-01 and 2001-02.
- iii) Letter received from RPFC, Chandigarh vide which ₹ 47,02,136/- were recovered on account of CPF from the bank accounts operated by the Corporation.
- iv) Letter vide which retrenchment allowance had been paid to Jai Parkash, Driver (on contract) upon his retrenchment.
- v) Letter written to the Finance Department, Govt. of Haryana, Chandigarh vide which the Corporation had recommended the case of Shri Ved Pal - Peon (engaged through contractor) for regularisation of his services in the Corporation.
- vi) Last agreement executed on 29.10.2002 between workman and the management.

On notice, the management on 24.04.2009 produced the following documents :-

- i) Photocopy of the agreement dated 07.02.2001 executed between Shri Diwan Singh S/o Shri Prem Singh and Haryana State Electronics Development Corporation Limited (HARTRON) to engage him on contract basis from 01.12.2000 to 28.02.2001.
- ii) Photocopy of agreement dated 09.12.1998, 26.04.1999, 20.10.1999 and 09.06.2000 executed between the workman and HARTRON.
- iii) Photocopy of retrenchment allowance release to Shri Jai Parkash - Driver (contract).
- iv) Photocopy of letter written to FC and P.S. to Govt. of Haryana, Electronics & IT Department, Haryana for regularisation of services of Shri Ved Pal - Peon (contract)

Shri Sunder Lal - SO filed an affidavit that remaining record is not available with the department. Vide order dated 24.04.2009 the application was disposed of with the observation that adverse inference shall be drawn against the respondent-management if necessary, with regard to documents which are mentioned in the application but are not produced in the Court.

19. From the evidence and documents on record, it comes out that the workman was initially appointed on 02.12.1998 as Peon on contractual basis by the management-corporation vide agreement dated 09.12.1998 (agreement executed between HARTRON and Jagbir Singh) for the period of 3 months from 02.12.1998 to 01.03.1999, which can be further renewed depending upon the work and output of workman - Jagbir Singh, on salary of ₹ 6,000/- payable at the rate of ₹ 2,000/- per month. Thereafter, vide another agreement dated 26.04.1999 (agreement executed between HARTRON and Jagbir Singh) the workman was engaged by the management as a Peon for execution of ID Project at Corporate Office, Chandigarh for total contractual period of 6 months i.e. from 01.03.1999 to 31.08.1999 with the stipulation the contract period may be shortened due to the cessation of the above project earlier. In no case, however, the contract shall extend beyond 31.08.1999. The working on the above said contract shall in no case confer any right to seek employment in the corporation under any circumstances whatsoever. Under this agreement, it was agreed that Jagbir Singh (workman) shall be paid a consolidated amount of ₹12,000/- payable @ ₹ 2,000/- in equal installments. Thereafter, vide another agreement dated 20.10.1999 (agreement executed between HARTRON and Jagbir Singh), the services of workman had been engaged as Peon under ID Project at Corporate Office, Chandigarh for total contractual period of 6 months i.e. from 01.09.1999 to 29.02.2000 with the stipulation the contract period may be shortened due to the cessation of the above project earlier. In no case, however, the contract shall extend beyond 29.02.2000. The working on the above said contract shall in no case confer any right to seek employment in the corporation under any circumstances whatsoever. Under this agreement, it was agreed that Jagbir Singh (workman) shall be paid a consolidated amount of ₹ 12,000/- payable @ ₹ 2,000/- in equal installments. Thereafter, another agreement dated 09.06.2000 (agreement executed between HARTRON and Jagbir Singh), the services of workman had been engaged as Peon under ID Project at Corporate Office,

Chandigarh for total contractual period of 3 months i.e. from 01.06.2000 to 31.08.2000 with the stipulation the contract period may be shortened due to the cessation of the above project earlier. In no case, however, the contract shall extend beyond 31.08.2000. The working on the above said contract shall in no case confer any right to seek employment in the corporation under any circumstances whatsoever. Under this agreement, it was agreed that Jagbir Singh (workman) shall be paid a consolidated amount of ₹ 6,750/- payable @ ₹ 2,250/- in equal installments. Agreement dated 07.02.2021 between Diwan Singh S/o Prem Singh and HARTRON has no concern with the case of the workman.

20. The workman has pleaded that from the initial date of appointment as a Peon on the basis of contract dated 09.12.1998 (joined service on 02.12.1998) which was extended from time to time, his services were engaged by the HARTRON and thereafter on the basis of tender dated 05.09.2002 / Exhibit 'W2' his services were engaged through contractor M/s Aman Securities & Detective (Regd.) to whom the contract was allotted of providing employees on contract basis. From the affidavit dated 26.11.2008 submitted by Shri Sunder Lal - Section Officer, Haryana State Electronics Development Corporation (HARTRON), Sector 17-B, Chandigarh in reply to workman's application dated 10.04.2007 seeking production of documents, it is made out that the management has not denied the fact that from 01.09.2000 to 12.11.2002 and 29.10.2002 an agreement was executed between Jagbir Singh (workman) and HARTRON for engaging him on contract basis. By way of affidavit the competent official of HARTRON has shown inability of the department to produce the said documents on record being not available. Likewise, in the abovementioned affidavit dated 26.11.2008, the competent official of HARTRON has shown its inability to produce the attendance record of the attendance from 01.11.2002 to 12.11.2002 being not available.

21. From the deposition of Shri Sunder Lal - Section Officer (Admn) HARTRON made by way of an affidavit dated 26.11.2008, it is sufficiently proved on record that the management has not denied the employment of the workman up to 12.11.2002. The facts mentioned above would prove that up to the acceptance of tender Exhibit 'W2' (tendered accepted on 12.09.2002 vide Exhibit 'W3') the workman was employed directly by the HARTRON on contract basis and w.e.f. the acceptance of tender (tendered accepted on 12.09.2002) onwards his services were engaged through contractor M/s Aman Securities & Detective (Regd.). With this the direct relationship of employer & employee between the workman and management i.e. HARTRON ceased to exist when the workman was deployed with the management through the contractor and the status of the HARTRON / management changed from employer to principal employer. W.e.f. 12.09.2002 to 12.11.2002 (services of the workman stated to be terminated on 12.11.2002) the workman became the direct employee of the contractor i.e. M/s Aman Securities & Detective (Regd.). The workman has not impleaded the contractor i.e. M/s Aman Securities & Detective (Regd.) as respondent-management. It is own case of the workman that after acceptance of the tender of the said contractor, the management informed him that in future his salary will be paid through the contractor. The workman has alleged that he has not been paid salary for the period 02.12.1998 to 08.12.1998. The workman during the period 02.12.1998 to 08.12.1998 was employee of management HARTRON. There is no document on record that during his employment with the HARTRON, he ever moved any representation to the management of HARTRON seeking to release his unpaid salary of the aforesaid period. The workman has raised the demand of salary of the aforesaid period only after termination of his services by raising a demand notice dated 10.03.2003. The perusal of the agreement dated 09.12.1998 executed between the workman and HARTRON would reveal that the consolidated amount of ₹ 6,000/- was payable @ ₹ 2,000/- per month to the workman by the management. It is not the case of the workman that he has not received the consolidated amount of ₹ 6,000/- from the management in terms of agreement dated 09.12.1998. As per the terms & conditions incorporated at serial No.6 in the agreement dated 09.12.1998 workman Jagbir Singh will not be entitled for any benefit except the aforesaid consolidated charges. As per condition No.2 of the said agreement, the contract was initially for 3 months from 02.12.1998 to 01.03.1999 which includes the period 02.12.1998 to 08.12.1998. The workman has also claimed unpaid salary from 25.10.2002 to 12.11.2002. As discussed above, during this period the workman was direct employee of contractor M/s Aman Securities & Detective (Regd.). The unpaid salary of the said period i.e. from 25.10.2002 to 12.11.2002 if any is payable by the contractor who has not been impleaded as party in the present case.

22. Learned Representative for the management has argued that in view of the arbitration clause No. 4 in the agreement dated 20.10.1999 executed between the parties, in case of any difference or dispute arising

out of said agreement, the same is to be referred to sole arbitration of the Managing Director of the management-corporation or his nominee, whose award shall be final and binding on both the parties. Therefore, in view of the arbitration clause the present dispute cannot be adjudicated by this Court. On the other hand, it is argued by Learned Representative for the workman that the workman was initially appointed on contract basis but later on he was working on regular basis, therefore, dispute in hand is purely an industrial dispute and there is no question of any arbitration clause. To my opinion, the **judgment dated 20.11.2012 of Hon'ble High Court of Bombay** referred by Learned representative for the workman titled as **Kingfisher Airlines Ltd. Versus Capt. Prithvi Malhotra in Writ Petition No. 2585** is applicable to the facts of present case to an extent wherein the judgment of the Hon'ble Apex Court reported in **AIR 1969 SC 78** titled as **Dhulabhai Versus State of M.P.** is relied upon. The Hon'ble High Court of Bombay in judgment dated 20.10.2012 held that adjudication of industrial dispute is reserved by the legislature exclusively for the authorities established under the ID Act, as a matter of policy. Therefore, the necessary implication, if any, the same stands excluded from the purview of the private fora of the Arbitrator. Consequently, the industrial dispute is rendered in-arbitrable outside the ID Act. In such a case, the Court where the dispute is pending, must refuse to refer the parties to arbitration, under Section 8 of the Arbitration Act, even they have agreed upon arbitration as the forum for settlement of dispute between them.

23. The workman in the present case has challenged that termination of his services on 12.11.2002 without giving any show-cause notice is illegal and violation of provisions of Section 25 of the ID Act. The workman neither in the claim statement nor in his testimony by way of affidavit Exhibit 'WA' has specifically pleaded whether his services were terminated by the contractor or by the management of HARTRON. However, the fact remained that the workman remained in employment of the management from 02.12.1998 till the acceptance of tender Exhibit 'W3'. On acceptance of tendered Exhibit 'W3' i.e. w.e.f. 12.09.2002 the management outsourced the work through the contractor, meaning thereby that w.e.f. 12.09.2002 the workman became the employee of the outsource agency i.e. contractor M/s Aman Securities & Detectives (Regd.) Chandigarh and the relationship of the workman with the management of HARTRON came to end w.e.f. 12.09.2002.

24. In order to seek remedy under the ID Act workman is required to establish that he falls within the definition of continuous service as defined in Section 25B of the ID Act. According to Section 25B of the ID Act a workman is deemed to be in continuous service for a period of one year, if he during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. In the present case, the workman has remained in service of the management of HARTRON w.e.f. 02.12.1998 till the acceptance of the tender vide Exhibit 'W3' (tender accepted on 12.09.2002). The continuous period of service of the workman with the management of HARTRON by excluding the period of employment under the contractor, preceding the termination is more than 240 days i.e. during the period 12.11.2001 to 11.09.2002 which falls within 12 calendar months preceding termination dated 12.11.2002. From the 12.09.2002 onwards till the date of termination i.e. 12.11.2002 the workman remained under the direct employment of contractor. Thus, last employer of the workman was contractor M/s Aman Securities & Defectives (Regd.), Chandigarh. The period of employment of the workman is to be seen with his last employer, which is M/s Aman Securities & Detectives (Regd.) with whom the services of the workman started afresh from 12.09.2002. The service period of the workman with his last employer / contractor is only of about 2 months preceding termination and does not fulfill the requirement of Section 25B of the ID Act qua the contractor. Therefore, the liability of the contractor under Section 25F is not attracted. As far as management of HARTRON is concerned, the relationship of employer & employee between the management and the workman came to end w.e.f. 12.09.2002.

25. The management has taken the plea that the services of the workman were purely on contractual basis. The engagement of the workman was for a fixed period and it was to be terminated the efflux of time. The services of the workman were not retrenched as it was a case of non-renewal of contract under Section 2(o)(bb) of the ID Act. To my opinion, in order to ascertain the fact that whether the engagement of the workman was for a fixed period, it is required to go through the contents of each and every contract executed between the parties from time to time. In the present case, the management has produced on record

photocopies of four contracts / agreements i.e. 09.12.1998 (for the period from 02.12.1998 to 01.03.1999), 26.04.1999 (for the period 01.03.1999 to 31.08.1999), 20.10.1999 (for the period from 01.09.1999 to 29.02.2000) and 09.06.2000 (for the period 01.06.2000 to 31.08.2000). In the present case, except above mentioned 4 contracts, both the parties did not place on record copy of any other agreement / contract executed between them during the period 01.09.2000 to 12.09.2002. The copies of the agreements available on record would show that in the first agreement dated 09.12.1998 it was not mentioned that services of the workman are engaged for a particular project rather in clause 2 of agreement dated 09.12.1998 it was mentioned that this contract shall be initially for 3 months from 02.12.1998 to 01.03.1999 which can be further renewed depending upon the work and output of Shri Jagbir Singh. In agreement dated 26.04.1999 it was mentioned in clause 2 that the workman was engaged by the management as a Peon for execution of ID Project at Corporate Office, Chandigarh for total contractual period of 6 months i.e. from 01.03.1999 to 31.08.1999 with the stipulation the contract period may be shortened due to the cessation of the above project earlier. In no case, however, the contract shall extend beyond 31.08.1999. The working on the above said contract shall in no case confer any right to seek employment in the corporation under any circumstances whatsoever. Similar is the clause in agreements dated 20.10.1999 and 09.06.2000. While executing the above mentioned agreements workman was aware that his work was only for a specific period and the job was not of permanent nature. Besides, his appointment was purely contractor in nature. There is no evidence that the workman was appointed against the sanctioned post. It is also not the case of the workman that he was appointed by the management after going through the selection process. The workman entered in a temporary employment on contractual basis and the engagement was not based on a proper selection as recognized by the relevant rules or procedure. The workman was aware of the consequences of the appointment being temporary, casual or contractual in nature. Therefore, workman cannot invoke the theory of legitimate expectation for being confirmed in the post or regularisation of his services. Consequently, the case of the workman is covered under Section 2(o)(bb) of the ID Act.

26. Accordingly, issue No.1 is decided against the workman and in favour of the management and issue No.4 is decided in favour of the management and against the workman.

Issues No. 2 & 3 :

27. Both these issues are taken up being interconnected and in order to avoid repetition of discussion.

28. Onus to prove both these issues is on the management.

29. In view of the discussion on issues No.1 & 4 above, since there is no relationship of employer & employee between the management & the workman, accompanied with the fact that the necessary party i.e. last employer i.e. M/s Aman Securities & Detectives (Regd.), Chandigarh has not been impleaded, the workman has no cause of action qua the management and the claim statement is not maintainable for non-joinder of necessary party.

30. Accordingly, both these issues are decided in favour of the management and against the workman.

Relief :

31. In the view of foregoing finding on the issues above, this industrial dispute reference is declined and answered against the workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 19.03.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 6th May, 2024

No. 13/2/110-HII(2)-2024/7304.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **111/2021** dated **22.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MANMOHAN SINGH, H.NO.1207, BLOCK 'E', ADARSH NAGAR, NAYAGAON, DISTRICT MOHALI. (Workman)

AND

M/S ON DOT COURIER & EXPRESS CARGO PVT. LTD., PLOT NO.27, INDUSTRIAL AREA, PHASE - II, CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Manmohan Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 01.07.2005 the workman was appointed as Accountant by the management of M/s On-Dot Courier & Cargo Ltd. Later on the management changes the name of its establishment and started its work under the name & style of M/s On-Dot Courier & Express Cargo Pvt. Ltd. All the staff including the workman started work in the new named establishment with continuity of service and all benefits intact. There was no change in the management, work place, nature of job and infrastructure etc. after the change of name of the establishment. The workman was drawing ₹14,448/- as wages per month at the time of termination which is less than the minimum rate of wages. On 01.04.2020 as usual the workman went to attend his normal duties but he was refused work by the management without assigning any reason and notice. The refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. The workman is not well versed with the law and on ill advice of someone inadvertently he served upon Mr. K. K. Sharma a demand notice dated 03.06.2020 for his reinstatement and other legal dues. He remained in continuous employment from 01.07.2005 to 31.03.2020. He had worked for more than 240 days preceding the date of termination. For his reinstatement the workman served upon the management a demand notice dated 07.03.2021. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the management did not appear before the Conciliation Officer, U.T. Chandigarh on any date fixed for settlement. The workman remained unemployed during the period i.e. from the date of termination to till date. The action of the management in terminating the services of the workman is illegal, wrongful, motivated, against

the principle of natural justice and unfair labour practice. Prayer is made that the workman may be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice issued for 01.12.2021 the management was served through Smt. Neeraj. None appeared on behalf of the management despite service. Vide order dated 01.12.2021 the management was proceeded against ex-parte.

4. In ex-parte evidence, workman Manmohan Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 22.03.2024 Learned Representative for the workman closed ex-parte evidence on behalf of the workman.

5. I have heard the arguments of Learned Representative for the workman and perused the judicial file.

6. In order to prove its case, workman Manmohan Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

7. From the evidence led by the workman, it is established that on dated 01.07.2005 the workman joined as Accountant with the management of M/s On-Dot Courier and Cargo Ltd., which later on in October 2019 changed its name to M/s On-Dot Courier and Express Cargo Pvt. Ltd. At the time of change of the name of the establishment from M/s On-Dot Courier & Cargo Ltd. to M/s On-Dot Courier & Express Cargo Pvt. Ltd., the establishment remained the same and consequently the workman started working in the new named establishment i.e. M/s On-Dot Courier & Express Cargo Pvt. Ltd. with continuity of service and all the benefits intact. On 01.04.2020 his services were terminated with verbal order by the management without assigning any reason and without issuance of any notice. The workman remained in continuous service of the management from 01.07.2005 to 31.03.2020 and thus completed continuous service of more than 240 days in 12 calendar months preceding termination. Thus, workman fulfils the requirement of Section 25B of the ID Act. Once, the requirement of Section 25B of the ID Act is fulfilled, the management / employer before terminating the services is bound to comply with the conditions precedent for retrenchment as envisaged in Section 25F of the ID Act. By Section 25F of the ID Act a prohibition against retrenchment, until the conditions prescribed by that section are fulfilled is imposed. For better appreciation Section 25F of the ID Act is extracted herein below :-

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

8. The workman has specifically alleged that before termination of his services neither any charge sheet was issued nor any inquiry was held and he was not paid retrenchment compensation at the time of termination. In the present case, despite service of notice none has appeared on behalf of the management to prove compliance of the conditions laid down in Section 25F of the ID Act. The testimony of workman / AW1 has gone un-rebutted and un-challenged as none appeared on behalf of the management to contest the claim statement and preferred to be proceeded against ex-parte. There is no reason to disbelieve the evidence led by the workman.

9. In view of the reasons recorded above, the termination of services of the workman is illegal being in violation of Section 25F of the ID Act and the same is hereby set aside.

10. Workman has specifically pleaded that from the date of termination till date he has remained unemployed.

11. In view of the discussion made above, the workman is held entitled to reinstatement with continuity of service along with 50% back wages. Accordingly, this industrial dispute is ex-parte allowed. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 22.03.2024.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

मैं, दीपा देवी (Deepa Davi), पत्नी बिशन दास, निवासी # 955, सेक्टर 20 ए, चंडीगढ़, ने अपना नाम बदलकर दीपा रख लिया है ।

[688-1]

मैं, बी एन दास, पुत्र शंभु राम, निवासी # 955, सेक्टर 20 ए, चंडीगढ़, ने अपना नाम बदलकर बिशन दास रख लिया है।

[689-1]

I, Munna Prasad, S/o Nag Narayan # 2012, Sector 45, Burail, Chandigarh, have changed my name to Jay Parkash Narayan.

[690-1]

I, Shaweta Manto, W/o Parmannand Chopal, # 5, Tiwana Complex, Butrela, Sector 41-B, Chandigarh, have changed my name to Shweta Devi.

[691-1]

I, Reeta Sood, W/o Parshotam Dass Sood, R/o H. No. 721, Sector 43-A, Chandigarh, have changed my name to Rita Beri.

[692-1]

I, Sunita, W/o Paras Ram # 958A, Small Flats Complex, Dhanas, Chandigarh, have changed my name to Geeta.

[693-1]

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."